

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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| WM ORGANIC GROWTH, INC. | § | |
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| Plaintiff, | § | |
| v. | § | CIVIL ACTION NO. H-10-0996 |
| | § | |
| A-HARMONY, LLC AND | § | |
| THOMAS HARMON, | § | |
| | § | |
| Defendants. | § | |

ORDER

A-Harmony, LLC and Thomas Harmon have moved under Federal Rule of Civil Procedure 59(e) to alter or amend this court’s May 25, 2010 order of remand and the accompanying opinion.¹ (Docket Entry No. 16). They argue that this court incorrectly concluded that diversity jurisdiction was absent because the description of A-Harmony’s citizenship in footnote 3 of the opinion referred to principal place of business rather than the citizenship of the A-Harmony LLC members. (Docket Entry No. 16). A-Harmony and Harmon have also moved for “reconsideration” of the remand order and the opinion, reurging the earlier arguments that this case arises under the patent laws. (*Id.*). This motion is also governed by Rule 59(e). *See Hamilton Plaintiffs v. Williams Plaintiffs*, 147 F.3d 367, 371 n. 10 (5th Cir. 1998); *Tran*, No.08-2748, 2010 WL 148404, at *1.

The motion to alter or amend the order of remand is denied. The order remanding this case to the 269th Judicial District of Harris County, Texas remains. The only change made to the opinion issued on May 25, 2010, (Docket Entry No. 14), is that footnote 3 is withdrawn and replaced with

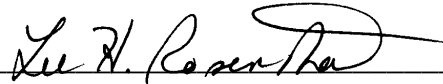
¹ The defendants alternatively characterize their motion as one for relief from judgment under Rule 60(b). Because the motion was filed within 28 days of the order, Rule 59(e) is the relevant rule. *See Tran Enters., LLC v. DHL Express (USA), Inc.*, No. 08-2748, 2010 WL 148404, at *1 (S.D. Tex. Jan. 12, 2010).

the following:

To the extent that Harmon and A-Harmony seek removal on the basis of diversity of citizenship under *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077 (5th Cir. 208), which states that an LLC has the citizenship of all its members, not its principal place of business, removal jurisdiction remains improper. Harmon and A-Harmony have not timely removed and have also waived the right to remove by extensively participating in the state court litigation.

Based on these rulings, the defendants' emergency motion to stay the order of remand, (Docket Entry No. 17), is denied as moot.

SIGNED on June 4, 2010, at Houston, Texas.

A handwritten signature in black ink, appearing to read "Lee H. Rosenthal", is written over a horizontal line.

Lee H. Rosenthal
United States District Judge